

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA *ex rel.*
J. MICHAEL HAYES,

Plaintiff,

v.

DECISION AND ORDER
12-CV-1015S

ALLSTATE INSURANCE COMPANY, ET AL.,

Defendants.

Relator J. Michael Hayes, who is a practicing attorney, alleges under the False Claims Act, 31 U.S.C. §§ 3729 et seq., that the various named defendants engaged in a nationwide scheme to deprive the United States of payments to which it was entitled under the Medicare Secondary Payer Act, 42 U.S.C. §§ 1395y et seq.

Presently before this Court is the Report and Recommendation of the Honorable Jeremiah J. McCarthy, United States Magistrate Judge (Docket No. 154), recommending that Hayes's amended complaint (Docket 21) be dismissed with prejudice as to him as a sanction for Hayes's violation of Rule 11 of the Federal Rules of Civil Procedure. Hayes and the Fed Ex defendants object to the Report and Recommendation. (Docket Nos. 158, 159, 160.)

Having reviewed the Report and Recommendation *de novo* after considering the objections and the parties' submissions, see 28 U.S.C. § 636(b)(1), this Court concurs with the recommendations contained in the Report and Recommendation. Far from being a simple matter of "grammar issues" (Docket No. 160, p. 42), the record reflects that Hayes's conduct in the pleading and prosecution of this matter warrants the Rule 11 sanctions that

Judge McCarthy recommends. Despite numerous safe-harbor opportunities, Hayes steadfastly adhered to his disproven allegations that he had personal knowledge that all defendants were engaged in a nationwide scheme to defraud the United States by failing to reimburse Medicare whenever they settled liability claims with a Medicare beneficiary. As Judge McCarthy noted, Hayes's own submissions and statements before the court demonstrate that he does not possess such personal knowledge. (See, e.g., Docket No. 154, p. 11.) Moreover, Hayes's objections, though long on ad hominem attacks, do not persuasively rebut the findings of fact or governing law underlying Judge McCarthy's Rule 11 findings. Hayes's objections are therefore denied and his amended complaint will be dismissed with prejudice as to him, for the reasons set forth in the Report and Recommendation.

The Fed Ex defendants' objections are also denied. The Fed Ex defendants' object to Judge McCarthy's determination that no monetary sanctions be imposed in light of the recommendation that the case be dismissed with prejudice as to Hayes. This Court agrees with Judge McCarthy that monetary sanctions, in addition to dismissal, are not warranted. The Fed Ex defendants' objections are therefore denied.

IT HEREBY IS ORDERED, that the Report and Recommendation (Docket No. 154) is ACCEPTED.

FURTHER, that the Objections (Docket Nos. 158, 159, 160) are DENIED.

FURTHER, that the Motion for Rule 11 Sanctions (Docket No. 86) is GRANTED.

FURTHER, that the Relator's Amended Complaint is DISMISSED WITH PREJUDICE as to Relator Hayes, but without prejudice to the United States.

FURTHER, that the Clerk of Court is directed to CLOSE this case.

SO ORDERED.

Date: February 6, 2016
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge